

Appl. No. 10/634,027
Atty. Docket No. 9045M2
Amdt. Dated 13 February 2006
Reply to Office Action of 19 January 2006
Customer No. 27752

REMARKS

Claim Status

Claims 1 - 5 are pending in the present application. Herein, Applicants present no amendments to the claims, add no new claims, and cancel no claims. No additional claims fee is believed to be due.

Response to Restriction Requirement

The Office Action has required election of a single invention under 35 U.S.C. 121, for prosecution on the merits. Pursuant to this requirement, Applicants hereby elect to prosecute the invention designated in the Office Action as Invention II. Claims 2 and 5 are drawn to this invention. This election is made with traverse.

Traversal of Restriction Requirement

The traversal of the indicated restriction requirement is made as it is considered by Applicants to be improperly made.

MPEP §803 sets forth the criteria for any restriction requirement, providing that there are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (1) The inventions must be independent or distinct as claimed; and
- (2) There must be a serious burden on the examiner if restriction is not required.

The Office Action alleges that these inventions are patentably distinct. Applicants respectfully submit that the claims of Inventions I-III are closely interrelated and in order to preserve unity of invention, all the claims should be prosecuted in the same application. All of the claims relate to HPTPbeta crystal and uses thereof. The claim of Invention I is directed to crystal itself while the claims of inventions II and III are directed to use of this crystal or its three dimensional coordinates to identify compounds that modulate HPTPbeta. Maintaining the Office's restriction requirement will result in a piece-meal prosecution, contrary to the policy set forth in the MPEP and espoused by the courts. Therefore, Applicants request that the restriction requirement be withdrawn.

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Another reason stated by MPEP §803 for restriction requirements is the unduly burdensome effect on the Examiner in searching the relevant art. In this instance, although the Office Action has noted three Inventions, these Inventions appear to involve searching only two classes, namely class 435, and class 702. Therefore, Applicants submit that there is no undue burden of search on the Examiner and request that claims 1-5, should be examined together.

Conclusion

This response represents an earnest effort to place the application in proper form. In view of the foregoing, consideration of this application and examination of the claims are respectfully requested.

Respectfully Submitted,

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